

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-3. General Child Care Facility Rules Inspection and Enforcement.

R430-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 39.

R430-3-2. Purpose.

This rule delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. These provisions provide criteria to ensure that sanctions are applied consistently and appropriately.

R430-3-3. Statement of Findings.

(1) The Department may inspect each licensed facility at least once during each year to determine compliance with the applicable rules.

(2) If the Department has reason to believe that a child care facility is in violation of Title 26, Chapter 39, or any of the rules governing child care, the Department shall serve a written Statement of Findings to the licensee or his designee.

(a) All Statements for Class I and III violations shall be served within 24 hours.

(b) All Statements for Class II violations shall be served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which presents imminent danger to children in the facility, or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which has a direct or immediate relationship to the health, safety, or security of children in a child care facility.

(c) "Class III Violation" means establishing, conducting, managing, or operating a child care facility regulated under Title 26, Chapter 39 and this rule without a license or with an invalid license.

(4) The Department may cite a facility with one or more violations.

(5) The Statement of Findings shall include:

- (a) The statute or rule violated,
- (b) a description of the violation,
- (c) the facts which constitute the violation, and
- (d) the classification of the violation.

R430-3-4. Plan of Correction.

(1) A child care facility shall, within 14 calendar days of the receipt of a Statement of Findings, submit a plan

outlining the following:

- (a) How the required corrections shall be accomplished.
 - (b) Who is the responsible person to monitor whether the correction is accomplished;
 - (c) The date by which the facility shall make the correction.
- (2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the plan of correction.
- (3) If the Department rejects the Plan of Correction, the Department shall notify the facility of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. The facility shall submit a revised plan of correction within 14 days of receipt of a request.
- (4) If a facility corrects a violation before the deadline for submission and approval of a Plan of Correction, the facility shall submit a report of correction.
- (5) If a facility seeks review of the statement of findings, it is not required to submit a plan of correction during the review period.

R430-3-5. Corrective Action Required for Class I Violations.

- (1) If the Department issues a Class I violation to a licensed or unlicensed child care facility, the facility shall abate or eliminate the situation, condition, or practice constituting the Class I violation within a fixed period of time for the correction that is specified in the Plan of Correction.
- (2) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.

R430-3-6. Corrective Action Required for Class II Violations.

- (1) A facility served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time approved by the Department, but not to exceed 60 days from the issue date.
- (2) The facility shall submit justification to the Department for corrections that take longer than 60 days, for consideration of approval by the Department.
- (3) The Department may issue a conditional license or impose sanctions to the license or close the facility if a facility is cited with a Class II violation and fails to take required corrective action.

R430-3-7. Failure to Correct Class III Violations.

- (1) If the Department serves a Statement of Findings for a Class III violation, the facility shall file a Request for Agency Action/License Application form within 14 days and pay the required licensing fee.
- (a) If the facility fails to submit the request as

specified, the Department shall order closure of the facility.

(b) If the Executive Director determines that the lives, health, or safety of the children cannot be adequately assured pending application and licensure or an adjudicative proceeding to determine whether a license is necessary, he may order immediate closure of the facility.

R430-3-8. Sanction Action on License.

(1) The Department may initiate an action against a child care facility pursuant to Section 26-39-108. That action may include:

(a) Denial or revocation of a license if the facility fails to comply with R430-100, exhibits evidence of aiding, abetting or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children under its care.

(b) Restriction or prohibition on new admissions to a child care facility for:

(i) violation of any provision under these rules; or

(ii) permitting, aiding, or abetting the commission of any illegal act in the child care facility.

(c) Distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensure rules or illegal conduct permitted by the facility and the agency action taken.

(d) Placement of Department employees or agents as monitors in the facility until corrective action is completed.

(e) Assessment of the cost incurred by the Department in placing the monitors.

(f) Assessment of monetary penalties that must be paid by the facility.

R430-3-9. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed child care facility if the health or safety of the children is in immediate jeopardy during the course of adjudicative proceedings.

(2) If the Department orders immediate closure of a facility, it shall serve an order that the facility is ordered closed as of a given date.

(3) The Department may maintain an action in the name of the state for injunction or other process against the child care facility which disobeys a closure order.

(4) The Department may assist in relocating children to another licensed facility.

R430-3-10. Statutory Penalties.

A violation of this rule is punishable by administrative civil monetary penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

KEY: child care facilities
January 21, 1998
26-39